

**SCHLEIER LAW OFFICES, P.C.**

3101 N. Central Avenue  
Suite 1090  
Phoenix, Arizona 85012  
Telephone: (602) 277-0157  
Facsimile: (602) 230-9250

TOD F. SCHLEIER, ESQ. #004612  
Tod@SchleierLaw.com  
BRADLEY H. SCHLEIER, ESQ. #011696  
Brad@SchleierLaw.com

*Attorneys for Plaintiff Danna Whiting*

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Danna Whiting, a single woman,

Plaintiff,

v.

Pima County, a municipal corporation  
and Government entity; Pima County  
Board of Supervisors; Mark Person, a  
married individual; and Cheri Clinton, a  
single individual;

Defendants.

No.

**COMPLAINT**

**(JURY TRIAL DEMANDED)**

Plaintiff Danna Whiting by and through counsel, for her Complaint against all  
Defendants alleges;

**JURISDICTION AND VENUE**

1. This is an action against Defendant Pima County to remedy discrimination  
and retaliation on the basis of disability/impairment in violation of Section 504 of the  
Rehabilitation Act of 1973. 29 U.S.C. § 701 *et seq.* ("Rehabilitation Act"), and to correct  
unlawful employment practices on the basis of disability to vindicate Plaintiff's rights, and

1 to make her whole. Additionally, Plaintiff has state law claims arising out of the same  
2 case and controversy against Defendants Mark Person and Cheri Clinton.

3 2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 as this  
4 matter involves a federal question under the Rehabilitation Act.

5 3. This Court has supplemental jurisdiction over Plaintiff's state law claims  
6 because said claims are so related to Plaintiff's federal claim that they form part of the  
7 same case or controversy pursuant to 28 U.S.C. §1367.

8 4. The unlawful employment practices described herein were committed within  
9 Pima County, State of Arizona. Accordingly, venue in this Court is proper pursuant to 28  
10 U.S.C. § 1391(b).

## 11 **PARTIES**

12 5. Plaintiff Danna Whiting (hereinafter "Plaintiff" or "Plaintiff Whiting") is a  
13 single woman and at all times relevant herein resided in Tucson, Pima County, State of  
14 Arizona.

15 6. Defendant Pima County is a municipal corporation and government entity  
16 governed by an elected Pima County Board of Supervisors and at all times relevant herein  
17 was and is doing business in the State of Arizona, including doing business under Health  
18 and Community Services dba Pima County Behavioral Health Department.

19 7. Defendant Pima County Board of Supervisors is comprised of an elected  
20 five-member board and among other duties, governs Pima County.

21 8. Defendant Pima County is an employer subject to the Rehabilitation Act, as  
22 amended.

23 9. Defendant Mark Person is a married individual and all actions alleged herein  
24 were performed on behalf of himself individually, his marital community, and done while  
25 employed, and during the course of his employment with Pima County. Defendant Person  
26 resides in Tucson, Arizona.



1           17. With Plaintiff's approved disability accommodations, she continued  
2 performing her job duties and she was able to care for her disability.

3           18. During this time there were no complaints about Plaintiff's disability  
4 accommodation, nor any complaints that Plaintiff was unable to perform the essential job  
5 duties/functions of her position. The accommodation was never revisited by Pima County  
6 HR or her supervisors.

7           19. On about May 1, 2017, Ms. Lesher was promoted from Deputy County  
8 Administrator to Chief Deputy County Administrator, and Dr. Francisco Garcia was  
9 promoted into Ms. Lesher's former role as the new Deputy County Administrator, and also  
10 became Plaintiff's new Supervisor. Dr. Garcia now reported to Ms. Lesher.

11           20. Plaintiff Whiting hired Mark Person in the summer of 2017; she had a prior  
12 working relationship him.

13           21. Defendant Person became angry when Plaintiff Whiting did not acquiesce to  
14 his demands to use her position to intimidate and act punitively towards the Sheriff's  
15 Department and the medical vendor at the Pima County Jail, Correct Care Solutions.

16           22. On about February 14, 2018, Plaintiff's Deputy Director Mark Person,  
17 expressed his dissatisfaction his Deputy Director position, said he wanted to "be in  
18 charge" of behavioral health and that he disagreed with Plaintiff's vision and philosophy  
19 for Pima County Behavioral Health, and made it very clear to Plaintiff Whiting that he  
20 wanted her job.

21           23. On or about February 26, 2018, Plaintiff Whiting raised concerns to  
22 Defendant Person about his inappropriate relationship with Ms. Cheri Clinton, directed  
23 Defendant Person to have no interactions with Defendant Clinton regarding her work or  
24 his, and told Defendant Person that he was not Defendant Clinton's supervisor and that he  
25 was not to direct her work in any way.

26

1           24. In April and May 2018, Plaintiff and her assistant, Tiffany Truax, reported to  
2 Defendant's Human Resources ("HR") Plaintiff's concerns about employee Defendant  
3 Clinton's continuing performance issues, and sought advice on how to best deal with those  
4 issues.

5           25. Under HR's direction, Plaintiff Whiting met with Defendant Clinton on  
6 about May 3, 2018 about Defendant Clinton's performance issues. Defendant Clinton  
7 became angry and upset, left Plaintiff's office and returned with Plaintiff Whiting's  
8 Deputy Director, Mr. Mark Person.

9           26. Plaintiff informed Defendant Person she had talked with HR and that this  
10 employee situation did not concern him. Defendant Person openly undermined Plaintiff's  
11 authority, interfered with Plaintiff's disciplinary directive from HR, and told Defendant  
12 Clinton to stop talking to Plaintiff and to go to HR.

13           27. On this day, May 3, 2018, Plaintiff gave Defendant Clinton a letter of  
14 instruction outlining the performance issues and a referral for mandatory Employee  
15 Assistance Program (EAP) for counseling due to her ongoing performance issues and  
16 emotional outbursts. Defendant Clinton yelled out "you can't make me go to EAP!",  
17 refused to sign the referral and began arguing out loud about the performance issues in the  
18 letter. Defendant Clinton gathered her things and walked out. Plaintiff Whiting later  
19 learned Defendant Clinton went downtown to Defendant's HR.

20           28. Following the May 3, 2018 meeting with Defendant Clinton and Defendant  
21 Person, Plaintiff Whiting spoke with her Supervisor, Dr. Garcia, about Defendant  
22 Clinton's disciplinary action, Defendant Person's interference, and that Plaintiff was  
23 waiting to connect with HR before taking further action. Plaintiff told Dr. Garcia she did  
24 not want to fire Defendant Clinton, even though HR had been advising Plaintiff for over a  
25 week to terminate Defendant Clinton. She also discussed the option of Administrative  
26 leave for Defendant Clinton.

1           29. After speaking with Dr. Garcia, May 3, 2018, Plaintiff spoke with two  
2 Human Resources members, Tiffany Ward, and JJ Johnson and reported the events  
3 relating to Defendant Clinton's disciplinary action and sought guidance. Plaintiff stated  
4 she did not want to fire Defendant Clinton. Ms. Ward told Plaintiff there are two choices:  
5 Plaintiff could "allow her to continue to behave this way or you can fire her, and I suggest  
6 you fire her because she is setting such a bad precedent by being insubordinate to you. If  
7 you let her get away with that it sends a message to the entire team." Plaintiff was  
8 repeatedly told by HR staff to fire Defendant Clinton.

9           30. Also, during this May 3, 2018 call, Ms. Johnson said she spoke with  
10 Defendant Clinton when she showed up at Defendant's downtown to HR and also said she  
11 spoke with Mark Person by phone and that Defendant Person complained about the  
12 disciplinary actions taken against Defendant Clinton. Ms. Johnson said she told Defendant  
13 Clinton that any complaints about Plaintiff's management should be taken up the chain to  
14 Plaintiff's Supervisor, Dr. Francisco Garcia.

15           31. On May 3, 2018, Plaintiff Whiting returned to Defendant Clinton's office  
16 again asked to meet with Defendant Clinton in the hope of not having to take the course of  
17 action directed by HR. Defendant Clinton again went to Defendant Person's office and  
18 loudly began saying that Plaintiff Whiting was making her meet with Plaintiff Whiting and  
19 that Defendant Clinton did not want to meet with Plaintiff. The staff in the suite watched  
20 Defendant Clinton's outburst. Defendant Clinton repeatedly refused to meet with Plaintiff  
21 Whiting and choose to instead create a drama-filled workplace. Accordingly, and with the  
22 direction from HR, Plaintiff Whiting terminated Defendant Clinton's employment on May  
23 3, 2018.

24           32. Later that same day on May 3, 2018, Plaintiff Whiting called Dr. Garcia and  
25 explained she was upset over the outcome with Defendant Clinton and about Defendant  
26 Person's intentional interference. Dr. Garcia told Plaintiff he believed HR had given

1 Plaintiff “bad advice” about terminating Defendant Clinton, and that his advice to Plaintiff  
2 would have been to do nothing with regard to Defendant Person and to “let things calm  
3 down.”

4 33. Defendant Person emailed Plaintiff Whiting on May 7, 2018 telling her that  
5 he was meeting with HR.

6 34. By about noon on May 7, 2018, Dr. Garcia told Plaintiff that Defendant  
7 Person was alleging Plaintiff bullied Defendant Person and he wanted to file a formal  
8 complaint against Plaintiff. Dr. Garcia also said Defendant Person would be allowed to  
9 work from home until he submitted a formal complaint.

10 35. Near the end of the day on May 7, 2018, Dr. Garcia questioned Plaintiff  
11 about her disability accommodation working from home two days a week (Tuesdays and  
12 Fridays), and commented that he didn't think Plaintiff was out two days a week and had  
13 thought it was only occasionally. Dr. Garcia told Plaintiff he was going to review  
14 Plaintiff's former Supervisor, Ms. Jan Leshner's file on Plaintiff and that he would meet  
15 with Plaintiff on Thursday morning about the accommodation.

16 36. Dr. Garcia's comment seemed odd in light of the fact that Plaintiff Whiting  
17 was a direct report of Dr. Garcia and had worked for Dr. Garcia for over a year with the  
18 disability accommodations where Plaintiff had been out of the office working from home,  
19 two days a week throughout the entire time.

20 37. Following Defendant Clinton's termination, Defendant Person filed an  
21 internal complaint against Plaintiff Whiting alleging claims of bullying and making  
22 knowingly false statements supplied by Defendant Clinton and others, of which Defendant  
23 Person had no personal knowledge.

24 38. Defendant Clinton made misleading statements to Pima County HR and  
25 participated in an effort to exact some type of revenge against Ms. Whiting and also  
26 supplied a copy of a cell phone recording Defendant Clinton made of the November 1,

1 2017 meeting with Plaintiff Whiting, staff member Ms. Trenace Taulton and Defendant  
2 Clinton about Defendant Clinton's concerns about Ms. Taulton's bullying behavior toward  
3 Clinton, and instead mischaracterized its contents to support Defendant Person's bullying  
4 complaint.

5 39. Defendant Person had repeatedly called and met with HR to formulate a  
6 complaint against Plaintiff stating he was afraid of Plaintiff, which is disputed by both  
7 Defendant Person's behavior and the numerous text messages he sent to Plaintiff which  
8 showed the opposite. Also, numerous staff members felt intimidated and targeted by  
9 Defendant Person. In fact, one employee had previously sent a complaint about Defendant  
10 Person's bullying to Plaintiff which she turned over to HR.

11 40. Defendant Person's created a situation to further his own personal interests  
12 to accomplish his stated goal of getting rid of Plaintiff Whiting in the hope of assuming  
13 Plaintiff's role and to continue his personal relationship with Defendant Clinton.

14 41. On Friday, May 11, 2018, Plaintiff's disability accommodation day, Dr.  
15 Garcia contacted Plaintiff at home, informed her that Defendant Person filed a formal  
16 Complaint against Plaintiff Whiting alleging claims of bullying. Dr. Garcia informed  
17 Plaintiff she had to meet with HR on this day at 3:00 p.m. and noted that Plaintiff's job  
18 depended on Plaintiff going to HR. Plaintiff's disability accommodation day was  
19 ignored, and Plaintiff was forced to come in to work on May 11, 2018, even after  
20 Plaintiff explained this was one of her accommodation days and that she had  
21 already taken medication for her disability and that she should not drive.

22 42. On May 11, 2018, Plaintiff Whiting met with Cory Dent, HR and Dr.  
23 Garcia was also present and met about Defendant Person's complaint and Plaintiff  
24 was formally placed on administrative leave on May 11, 2018.



1       43. On about May 14, 2018, Mr. Garcia told Plaintiff he had to disclose to  
2 Plaintiff that because of Defendant Person's complaint, Ms. Whiting's ADA  
3 accommodation would be "revisited" as one of the outcomes of the investigations.

4       44. Prior to May 11, 2018, Plaintiff had worked for a year and a half without any  
5 questions or concerns relating to Plaintiff's disability accommodations. Pima County HR  
6 and Pima County leadership never revisited her accommodation with her. In the midst of a  
7 complaint, suddenly it became clear that the major issue was Plaintiff's disability and her  
8 accommodations.

9       45. On Monday, June 18, 2018, Plaintiff's disability accommodations were  
10 again disregarded by Defendant Pima County and retaliated against by telling Plaintiff she  
11 needed to report to work the next day, Tuesday June 19<sup>th</sup>, 2018, to be interviewed about  
12 Defendant Person's complaint. Only after Plaintiff asked Ms. Marchell Papas from HR if  
13 her disability accommodation was taken away was the interview day changed. She was  
14 told in that case, she needed to report that same day (Monday) for her interview at 12:45.

15       46. In addition to disregarding Plaintiff Whiting's disability accommodation  
16 day, scheduling her interview for this day and time also contradicted Pima County's policy  
17 and letter about administrative leave given to Ms. Whiting which stated that from 12:00 -  
18 1:00 p.m. was not a time Ms. Whiting needed to be available to the County as this was  
19 considered her lunch break. Plaintiff Whiting continued to be subjected to discriminatory  
20 treatment.

21       47. Plaintiff was interviewed by Ms. Cathy Bohland, HR, about Defendant  
22 Person's complaint and alleged claims of bullying on June 18, 2018 and June 20, 2018,  
23 totaling about 13 hours.

24       48. At the end of Plaintiff's interviews, Plaintiff asked Ms. Bohland if she would  
25 interview Plaintiff's witnesses, who could provide exculpatory information on Plaintiff's  
26 behalf relating to Defendant Person's complaint, and Ms. Bohland would not commit to

1 talking to any of Plaintiff's witnesses, only saying she would consult her notes. Ms.  
2 Bohland never interviewed any of Plaintiff Whiting's exculpatory witnesses.

3 49. On June 21, 2018 Defendant extended Plaintiff's administrative leave for  
4 another 30 days.

5 50. On June 21, 2018, Dr. Garcia called Plaintiff to inform her that her  
6 administrative leave was extended for another 30 days. During this call Plaintiff stated she  
7 believed she was treated unfairly by Ms. Bohland. Dr. Garcia responded, "oh geeze" but  
8 did not offer to intervene or even inquire as to why Plaintiff believes this to be the case.

9 51. Dr. Garcia texted Plaintiff on Monday, July 23, 2018 stating he wanted to  
10 meet that afternoon to discuss "options". Dr. Garcia and Jan Lesher met with Plaintiff that  
11 afternoon and Dr. Garcia stated he believed Plaintiff was treated fairly, despite never  
12 asking Plaintiff why she believed the process had been unfair. He told her she had 24  
13 hours to decide to submit a letter of resignation or choose to be fired.

14 52. Plaintiff refused to resign and was terminated effective July 24, 2018.

15 53. When the staff were informed that Plaintiff Whiting no longer worked for  
16 the County, Ms. Linda Everett, a staff person who reported to Mark Person was noted by  
17 multiple people to have a smile on her face with this news, asked Dr. Francisco Garcia if  
18 Mark Person was going to be put in Plaintiff's position.

19 54. Defendant Person made various defamatory statements about Plaintiff  
20 Whiting with regard to bullying and Plaintiff's actions as a supervisor in an effort to get  
21 her fired so he could have her job. Defendant Person's defamatory statements placed  
22 Plaintiff Whiting in a false light.

23 55. Defendant Clinton also made defamatory statements about Plaintiff Whiting  
24 with regard to Plaintiff Whiting engaging in bullying behavior and relating to her abilities  
25 as a supervisor, to both people inside and outside of the County. Defendant Clinton's  
26 defamatory statements placed Plaintiff Whiting in a false light.



1 the accommodation and stated that it would be “revisited” and, in less than 90 days,  
2 Plaintiff’s employment with Defendant Pima County was terminated.

3 64. Plaintiff’s was discriminated against, retaliated against and terminated due to  
4 her disability/impairment accommodation by Defendant Pima County in violation of  
5 Section 504 of the Rehabilitation Act.

6 65. As a direct and proximate result of Defendant Pima County’s intentional  
7 discrimination, Plaintiff has sustained economic damages in the form of loss of wages and  
8 the value of job benefits in an amount to be proven at trial.

9 66. In addition, Defendant Pima County’s actions have caused, continue to  
10 cause, and will cause Plaintiff to suffer damages for emotional distress, mental anguish,  
11 loss of enjoyment of life, damage to her reputation due to her termination, and other non-  
12 pecuniary losses all in an amount to be proven at trial.

13 **COUNT TWO**

14 **INTERFERENCE WITH CONTRACTUAL RELATIONSHIP**

15 **(AGAINST DEFENDANTS MARK PERSON AND CHERI CLINTON ONLY)**

16 67. By reference hereto, Plaintiff hereby incorporates all prior paragraphs as if  
17 fully alleged herein.

18 68. A valid employment contractual relationship or business expectancy existed  
19 between Plaintiff and Pima County.

20 69. Defendants Mark Person and Cheri Clinton had knowledge of the  
21 employment relationship or business expectancy between Plaintiff and Pima County.

22 70. Defendants Person and Clinton intentionally interfered inducing or causing a  
23 breach or termination of the employment contractual relationship or expectancy between  
24 Plaintiff and Pima County with regard to their actions regarding Person’s and Clinton’s  
25 false allegations of bullying against Plaintiff that led to the termination of Plaintiff  
26 Whiting’s employment relationship with Pima County.



1 by stating that she engaged in such misconduct in her trade, profession, office or  
2 occupation. Defendants Person's and Clinton's statements are also defamatory because  
3 they would deter third persons from dealing or associating with Plaintiff.

4 78. As a direct and proximate result of Defendants Person's and Clinton's false  
5 and defamatory statements Plaintiff has sustained economic damages in the form of loss of  
6 wages and the value of job benefits in an amount to be proven at trial.

7 79. As a direct and proximate result of Defendants Person's and Clinton's  
8 defamatory, Plaintiff has also suffered damages in the form of emotional distress, anxiety,  
9 depression, sleeplessness, loss of self-worth, loss of reputation in the community, her  
10 career, and employment with the County, and extreme stress which has exacerbated the  
11 physical symptoms and the side effects of Plaintiff's serious medical condition.

12 80. Defendants Person's and Clinton's conduct was willful, malicious and in  
13 reckless disregard to the rights of Plaintiff that evidence an evil mind and Plaintiff is  
14 therefore entitled to recover punitive and exemplary damages arising from Defendant  
15 Person's conduct.

#### 16 **COUNT FOUR**

#### 17 **FALSE LIGHT INVASION OF PRIVACY**

#### 18 **(AGAINST DEFENDANTS MARK PERSON AND CHERI CLINTON ONLY)**

19 81. By reference hereto, Plaintiff hereby incorporates all prior paragraphs as if  
20 fully alleged herein.

21 82. Defendants Mark Person and Cheri Clinton made various false statements in  
22 support of Defendant Person's internal complaint against Plaintiff relating to Plaintiff  
23 being a bully and about her performance as a supervisor including but not limited to  
24 Plaintiff's actions relating to the termination of Defendant Cheri Clinton. Said false  
25 statements were published to individuals inside and outside the County.

26

1           83. Defendants Person and Clinton made various false statements with  
2 knowledge that said statement were false or made with a reckless disregard for the truth.

3           84. That said statements created a false implication and innuendo about Plaintiff  
4 designed to bring Plaintiff into disrepute, contempt and ridicule and impeach her honesty,  
5 integrity, virtue and reputation by stating that she engaged in such misconduct in her trade,  
6 profession, office or occupation.

7           85. Defendants Person's and Clinton's statements placed Plaintiff in a false light  
8 highly offensive to a reasonable person.

9           86. As a direct and proximate result of Defendants Person's and Clinton's  
10 statements placing Plaintiff in a false light, Plaintiff has sustained economic damages in  
11 the form of loss of wages and the value of job benefits in an amount to be proven at trial.

12           87. As a direct and proximate result of Defendants Person's and Clinton's  
13 statements placing Plaintiff in a false light, Plaintiff has also suffered damages in the form  
14 of emotional distress, anxiety, depression, sleeplessness, loss of self-worth, loss of  
15 reputation in the community, her career, and employment with the County, and extreme  
16 stress.

17           88. Defendants Person's and Clinton's conduct was willful, malicious and in  
18 reckless disregard to the rights of Plaintiff so as to evidence an evil mind and Plaintiff is  
19 therefore entitled to recover punitive and exemplary damages arising from Defendants  
20 Person's and Clinton's conduct.

21  
22           **WHEREFORE**, Plaintiff demands judgment against Defendants, jointly and  
23 severally, as follows:

- 24           1. For General and Special damages to be proven at trial;  
25           2. For compensatory damages relating to emotional distress as proven at trial;  
26

3. For punitive and exemplary damages to be proven at trial (against Person and Clinton only);
4. For reasonable attorneys' fees and costs; and
5. For such other relief, the Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial.

DATED this 2<sup>nd</sup> day of May, 2019.

**SCHLEIER LAW OFFICES, P.C.**

/s/ Bradley H. Schleier  
Bradley H. Schleier  
3101 North Central Ave., Suite 1090  
Phoenix, Arizona 85012  
Brad@SchleierLaw.com  
*Attorneys for Plaintiff Danna Whiting*